UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/750,128	12/31/2003	Niniane Wang	24207-10093	9784

62296 7590 03/15/2010
GOOGLE / FENWICK
SILICON VALLEY CENTER
801 CALIFORNIA ST.
MOUNTAIN VIEW, CA 94041

EXAMINER	
SCIACCA, SCOTT M	
ART UNIT	**PAPER NUMBER**
2446	

MAIL DATE	DELIVERY MODE
03/15/2010	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/750,128	WANG ET AL.	
	Examiner	Art Unit	
	Scott M. Sciacca	2446	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *04 January 2010*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-12,15-27 and 30-42* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-12,15-27,30-39,41 and 42* is/are rejected.

7)☒ Claim(s) *40* is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

This office action is responsive to communications filed on January 4, 2010. Claims 1, 17, 35 and 37-49 have been amended. New claim 42 has been added. Claims 1-12, 15-27 and 30-42 are pending in the application.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. Claims 1-15, 17-30, 32-39 and 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hasink et al. (US 2005/0149932) in view of Hellerstein et al. (US 2004/0221184) and Gschwind et al. (US 2003/0217297).

Regarding Claim 1, Hasink teaches a method comprising:

receiving, by an application executed by an operating system, a plurality of operating parameters having values describing a plurality of resources of a client device (*"Embodiments of the present invention can be used with numerous different operating systems"* – See [0020]; *"an operating system 118, running a foreground process 120 and a background process 122 (such as an index process)"* – See [0051]; *"a background process running at idle priority uses performance counters, optionally including one or more of the counters discussed above, and/or other mechanisms to*

determine the immediate load on a resource, such as a magnetic or optical mass storage device, it wishes to use" – See [0024]; *"The determination can take into account the processor or central processing unit (CPU) load, as measured by the time spent in the idle loop, as well as the load on other shared system resources, such as disk drives"* – See [0018]; *"By way of example, the background process checks a performance counter, such as the counter named "\\PhysicalDisk\Current Disk Queue Length" for the specific disk drive instance it wishes to read from or write to. Alternatively or in addition, the background process can access the aggregate total value of the current disk queue lengths for all of the physical disk drives, whose instance is known as "_Total". Advantageously, this is easier than keeping track of which disk drive the process is about to access and checking only that one drive's queue length"* – See [0029]; The queue lengths (operating parameters) of each physical drive (resource) are monitored using the performance counters);

determining a value representing a performance measure of the client device based at least in part on a combination of the plurality of operating parameter values describing the plurality of resources of the client device (*"Alternatively or in addition, the background process can access the aggregate total value of the current disk queue lengths for all of the physical disk drives, whose instance is known as "_Total""* – See [0029]; The queue lengths of each physical drive are combined into the "Total" parameter. Thus, the usage levels of a plurality of resources (physical drives) are aggregated into a single performance counter);

assigning the value representing the performance measure to a usage variable (As mentioned above, the aggregate total of the queue lengths of all the physical disk drives is assigned to the "Total" performance counter); and

correlating by the application a resource usage level of the application with the usage variable, the correlating comprising the application modifying its own execution based at least in part on a change to the value assigned to the usage variable (*"If the value has changed, the background process uses this as an indication that another process has used the disk in the interim and is possibly still using the disk, and so backs off and waits for an additional period or periods of time"* – See [0037]).

Although Hasink mentions receiving operating parameters which describe a plurality of different types of resources (e.g., CPU, memory, network hardware, storage devices, etc) (See [0021]), Hasink only describes modifying the resource usage level of the application with respect to hard disk usage.

In analogous art, Hellerstein discloses an adaptive throttling system for minimizing the impact of background applications (utility programs 32) on foreground applications (production programs 30) (See Abstract, [0028], [0029]). Hellerstein teaches receiving a plurality of operating parameters having values describing a plurality of different types of resources of a client device, determining a value representing a performance measure of the client device based on a combination of the plurality of operating parameter values describing the plurality of different types of resources and modifying the resource usage level of an application based on the determination (*"The user is then prompted to enter the performance metric of interest*

(step 124). The available performance metrics are preferably displayed in a list or other suitable form so that the administrator knows which performance metrics are available before making their selection" – See [0037]; *"Typical performance metrics include throughput, queue lengths, service time, CPU time, I/O, memory"* – See [0037]; *"In the first step 130, the sensor module 104 measures the selected performance metric of interest for the computer system 10. The sensor module 104 then submits the measured performance data associated with the performance metric to the baseline estimator module 108 and to the compute impact module 110 (step 132)"* – See [0039]; *"Next the controller module 106 uses this information as well as the performance impact limit from the administrator interface module 102 to calculate a new throttling level (steps 142, 144) for each executing utility"* – See [0041]).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Hasink to modify a resource usage level of an application with respect to different types of resources. One would have been motivated to do so since the effectiveness of the adaptive throttling varies according to the selected performance metric as some performance metrics will have a greater impact on performance than others (See Hellerstein, [0037]).

Hasink does not explicitly teach that the application modifying its own execution comprises the application turning off an active feature of the application.

However, Gschwind does teach an application modifying its own execution comprising the application turning off an active feature of the application (*"The notification event can be further refined to contain information about particular chip*

regions (either within a microprocessor, or in a system-on-a-chip) that have reached or exceeded a certain thermal threshold, the program being adapted to modify its behavior to use less of a particular resource "resource allocation"" – See [0038]; *"In one embodiment, the software is adapted by disabling the execution or reducing the execution frequency of at least one algorithm, or sub-algorithm (e.g., a graphics rendering program may disable anti-aliasing logic during rendering, or polygons may be drawn without shading to reduce computational complexity)"* – See [0039]).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Hasink to include disabling an active feature of an application based on a resource usage level. Motivation for doing so would be to preserve acceptable user experience in an application by providing graceful situation-adapted degradation (i.e., reducing the graphics detail in a game) as opposed to brute force performance reduction (i.e., dropping the frame rate) (See Gschwind, paragraphs [0010] & [0016]).

Regarding Claims 2 and 18, Hasink teaches correlating by the application the resource usage level of the application with the usage variable comprising the application suspending one or more operations when the value assigned to the usage variable exceeds a threshold (*"When the counter value is non-zero, or greater than a designated threshold, the background process waits a designated amount of time, such as 10 milliseconds, before checking again"* – See [0031]).

Regarding Claims 3 and 19, Hasink teaches correlating by the application the resource usage level of the application with the usage variable comprising the application performing an activity affecting a usage variable proximate to a time that the value assigned to the usage variable indicates an existing activity (*"The background process then waits a given amount of time, such as, by way of example, 10 milliseconds, and checks for pending disk or mass storage I/O by checking the "current disk queue length" counter, or other appropriate performance indicator"* – See [0031]; *"When the counter value is non-zero, or greater than a designated threshold, the background process waits a designated amount of time, such as 10 milliseconds, before checking again"* – See [0031]; The background process (application) will wait a designated amount of time to access a resource (i.e., hard disk) if the resource is already being accessed by another application, before trying to access the resource again).

Regarding Claims 4 and 20, Hasink teaches correlating by the application the resource usage level of the application with the usage variable comprising the application adjusting a rate of operation based at least in part on the value assigned to the usage variable (*"The background process can then determine when idle cycles are being allocated to the background process because another process, such as a foreground process, is waiting for an operation on that same resource to complete. In such cases, the background process optionally refrains from imposing an additional load on the resource, so that the other process can run without delay"* – See [0024]).

Regarding Claims 5 and 21, Hasink teaches correlating by an application the resource usage level of the application with the usage variable comprising the application adjusting a sequence of operations based at least in part on the value assigned to the usage variable (*"An embodiment optionally utilizes a background process which performs indexing of the contents of a user's hard disk without impacting system performance under Windows-NT based operating systems to an extent that would be readily noticeable by a user. The indexing process performs many disk I/O operations when indexing the contents of the user's hard disk to allow the user to rapidly find files which contain certain words, phrases, or strings"* – See [0025]; *"In addition, the index engine can refrain from indexing until it determines that the mass storage device, which stores the data or files to be indexed, is not being utilized by a higher priority or foreground process"* – See [0027]; The sequence of indexing a client device's hard disk is adjusted based on whether or not other higher priority processes are simultaneously trying to access the hard disk as indicated by the current value of one or more of the performance counters shown in Table 1).

Regarding Claims 6 and 22, Hasink teaches correlating by the application the resource usage level of the application with the usage variable comprising the application adjusting an active feature based at least in part on the value assigned to the usage variable (*"An embodiment optionally utilizes a background process which performs indexing of the contents of a user's hard disk without impacting system*

performance under Windows-NT based operating systems to an extent that would be readily noticeable by a user. The indexing process performs many disk I/O operations when indexing the contents of the user's hard disk to allow the user to rapidly find files which contain certain words, phrases, or strings" – See [0025]; *"In addition, the index engine can refrain from indexing until it determines that the mass storage device, which stores the data or files to be indexed, is not being utilized by a higher priority or foreground process"* – See [0027]; The active feature of the background process (application) which is responsible for indexing a client device's hard disk is adjusted when the application refrains from attempting to access the hard drive when other higher priority processes are simultaneously trying to access the hard disk).

Regarding Claims 7 and 23, Hasink teaches the client device (Computer 102 – See Fig. 1) comprising a client processor (CPU 104 – See Fig. 1) and a client memory storage device (Memory 116 – See Fig. 1).

Regarding Claims 8 and 32, Hasink teaches receiving the plurality of operating parameters comprising monitoring at least one of the operating parameters (*"the background process checks a performance counter, such as the counter named "\\PhysicalDisk\Current Disk Queue Length" for the specific disk drive instance it wishes to read from or write to"* – See [0029]).

Regarding Claims 9 and 24, Hasink teaches monitoring a period of inactivity of the client device (*"After the second predetermined time period has elapsed, a determination is made as to whether the computer resource is idle"* – See Abstract).

Regarding Claims 10 and 25, Hasink teaches receiving the plurality of operating parameters comprising receiving at least one of the operating parameters during an initial load of the client processor (*"Embodiments of the present invention determine when a computer and/or resource therein is idle. The determination can take into account the processor or central processing unit (CPU) load"* – See [0018]).

Regarding Claims 11 and 26, Hasink teaches receiving the plurality of operating parameters comprising receiving at least one of the operating parameters during a predetermined time interval (*"The background process checks the value of this counter before and after an interval, such as the 10 millisecond wait interval described above"* – See [0037]).

Regarding Claims 12 and 27, Hasink teaches the plurality of operating parameters comprising a client processor load (*"Embodiments of the present invention determine when a computer and/or resource therein is idle. The determination can take into account the processor or central processing unit (CPU) load"* – See [0018]).

Regarding Claims 15 and 30, Hasink teaches the method of Claim 7 further comprising writing to a computer readable medium of the client memory storage device (*"while running, the indexing process is constantly reading from and writing to the user's hard disk"* – See [0009]).

Regarding Claim 17, Hasink teaches a computer readable storage medium comprising instructions (*"FIG. 1 depicts a computer system 100, including a computer 102, an operating system 118, running a foreground process 120 and a background process 122 (such as an index process) in memory 116, which can be random access memory (RAM), coupled to a CPU (central processing unit) 104 via a memory bus 114, a disk controller 106 coupled to the CPU 104 via peripheral bus 112, one or more mass storage devices 108, including one or more of magnetic hard disk drives, optical drives, solid state non-volatile memory, or the like"* – See [0051]), that, when executed, cause an application to perform the steps of:

receiving, by an application executed by an operating system, a plurality of operating parameters having values describing a plurality of resources of a client device (*"Embodiments of the present invention can be used with numerous different operating systems"* – See [0020]; *"an operating system 118, running a foreground process 120 and a background process 122 (such as an index process)"* – See [0051]; *"a background process running at idle priority uses performance counters, optionally including one or more of the counters discussed above, and/or other mechanisms to determine the immediate load on a resource, such as a magnetic or optical mass*

storage device, it wishes to use" – See [0024]; *"The determination can take into account the processor or central processing unit (CPU) load, as measured by the time spent in the idle loop, as well as the load on other shared system resources, such as disk drives"* – See [0018]; *"By way of example, the background process checks a performance counter, such as the counter named "\\PhysicalDisk\Current Disk Queue Length" for the specific disk drive instance it wishes to read from or write to. Alternatively or in addition, the background process can access the aggregate total value of the current disk queue lengths for all of the physical disk drives, whose instance is known as "_Total". Advantageously, this is easier than keeping track of which disk drive the process is about to access and checking only that one drive's queue length"* – See [0029]);

determining a value representing a performance measure of the client device based at least in part on a combination of the plurality of operating parameter values describing the plurality of resources of the client device (*"Alternatively or in addition, the background process can access the aggregate total value of the current disk queue lengths for all of the physical disk drives, whose instance is known as "_Total""* – See [0029]; The queue lengths of each physical drive are combined into the "Total" parameter. Thus, the usage levels of a plurality of resources (physical drives) are aggregated into a single performance counter);

assigning the value representing the performance measure to a usage variable (As mentioned above, the aggregate total of the queue lengths of all the physical disk drives is assigned to the "Total" performance counter); and

correlating by the application a resource usage level of the application with the usage variable, the correlating comprising the application modifying its own execution based at least in part on a change to the value assigned to the usage variable (*"If the value has changed, the background process uses this as an indication that another process has used the disk in the interim and is possibly still using the disk, and so backs off and waits for an additional period or periods of time"* – See [0037]).

Although Hasink mentions receiving operating parameters which describe a plurality of different types of resources (e.g., CPU, memory, network hardware, storage devices, etc) (See [0021]), Hasink only describes modifying the resource usage level of the application with respect to hard disk usage.

In analogous art, Hellerstein discloses an adaptive throttling system for minimizing the impact of background applications (utility programs 32) on foreground applications (production programs 30) (See Abstract, [0028], [0029]). Hellerstein teaches receiving a plurality of operating parameters having values describing a plurality of different types of resources of a client device, determining a value representing a performance measure of the client device based on a combination of the plurality of operating parameter values describing the plurality of different types of resources and modifying the resource usage level of an application based on the determination (*"The user is then prompted to enter the performance metric of interest (step 124). The available performance metrics are preferably displayed in a list or other suitable form so that the administrator knows which performance metrics are available before making their selection"* – See [0037]; *"Typical performance metrics include*

throughput, queue lengths, service time, CPU time, I/O, memory" – See [0037]; *"In the first step 130, the sensor module 104 measures the selected performance metric of interest for the computer system 10. The sensor module 104 then submits the measured performance data associated with the performance metric to the baseline estimator module 108 and to the compute impact module 110 (step 132)"* – See [0039]; *"Next the controller module 106 uses this information as well as the performance impact limit from the administrator interface module 102 to calculate a new throttling level (steps 142, 144) for each executing utility"* – See [0041]).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Hasink to modify a resource usage level of an application with respect to different types of resources. One would have been motivated to do so since the effectiveness of the adaptive throttling varies according to the selected performance metric as some performance metrics will have a greater impact on performance than others (See Hellerstein, [0037]).

Hasink does not explicitly teach that the application modifying its own execution comprises the application turning off an active feature of the application.

However, Gschwind does teach an application modifying its own execution comprising the application turning off an active feature of the application (*"The notification event can be further refined to contain information about particular chip regions (either within a microprocessor, or in a system-on-a-chip) that have reached or exceeded a certain thermal threshold, the program being adapted to modify its behavior to use less of a particular resource "resource allocation""* – See [0038]; *"In one*

embodiment, the software is adapted by disabling the execution or reducing the execution frequency of at least one algorithm, or sub-algorithm (e.g., a graphics rendering program may disable anti-aliasing logic during rendering, or polygons may be drawn without shading to reduce computational complexity)" – See [0039]).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Hasink to include disabling an active feature of an application based on a resource usage level. Motivation for doing so would be to preserve acceptable user experience in an application by providing graceful situation-adapted degradation (i.e., reducing the graphics detail in a game) as opposed to brute force performance reduction (i.e., dropping the frame rate) (See Gschwind, paragraphs [0010] & [0016]).

Regarding Claim 33, Hasink teaches the usage variable being a quantitative performance measure of the client device (Table 1 shows the various counters that may be monitored. Note that the counters shown in Table 1 are quantitative performance measurements, such as "% idle time" or "Disk Bytes/sec").

Regarding Claim 34, Hasink teaches the usage variable being a qualitative performance measure of the client device (*"the background process checks a performance counter, such as the counter named "\\PhysicalDisk\Current Disk Queue Length" for the specific disk drive instance it wishes to read from or write to"* – See [0029]; *"a check of the "current disk queue length" performance counter may not be, on*

its own, adequate or sufficient to allow a background process to determine whether or not another process is using the disk drive, because a queued operation might be on behalf the background process itself" – See [0030]; One performance counter shown in Table 1 is "Current Disk Queue Length". While this value is a number, it does not directly and numerically indicate a performance measure).

Regarding Claim 35, Hasink teaches the application modifying its own execution comprising the application throttling back its usage of the client device (*"The background process can then determine when idle cycles are being allocated to the background process because another process, such as a foreground process, is waiting for an operation on that same resource to complete. In such cases, the background process optionally refrains from imposing an additional load on the resource, so that the other process can run without delay"* – See [0024]).

Regarding Claim 36, Hasink teaches the application dynamically modifying its own execution based on dynamic changes to the value assigned to the usage variable (*"If the value has changed, the background process uses this as an indication that another process has used the disk in the interim and is possibly still using the disk, and so backs off and waits for an additional period or periods of time, such as additional 10 millisecond intervals, until the counter value stops changing"* – See [0037]).

Regarding Claim 37, Hasink teaches the application modifying its own execution comprising the application pausing between execution of resource-intensive calculations (*"at state 316 the background process waits a designated period of time, such as 10 msec. At state 318, a determination is then made as to whether the disk is in use"* – See [0054]).

Regarding Claim 38, Hasink teaches a resource used by the application being memory (Memory 116 – See Fig. 1) and wherein the application modifying its own execution comprises the application dynamically scaling back its memory usage based on dynamic changes to the value assigned to the usage variable (The example given above deals with the background process (application) modifying its own execution with regard to accessing one or more hard disks. Hard disks are a type of memory and the usage of the hard disk by the application includes performing "seeks" for data on the hard disk during the indexing procedure (also mentioned above)).

Regarding Claim 39, Hasink teaches a resource used by the application being network bandwidth (*"Similarly, the above techniques can be applied to a shared network with limited bandwidth"* – See [0050]) and wherein the application modifying its own execution comprises the application throttling-back usage of network bandwidth based on dynamic changes to the value assigned to the usage variable (*"there may be multiple processes trying to access the Internet, and use of the foregoing techniques avoid*

having a background process slow down a transfer being made by a foreground process" – See [0050]).

Regarding Claim 41, Hasink teaches a plurality of usage variables (See Table 1) and wherein the correlating comprises the application modifying its own execution based at least in part on changes to values assigned to the plurality of usage variables (*"In an example embodiment, a background process running at idle priority uses performance counters, optionally including one or more of the counters discussed above, and/or other mechanisms to determine the immediate load on a resource, such as a magnetic or optical mass storage device, it wishes to use"* – See [0024]).

3. Claims 16 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hasink et al. (US 2005/0149932) in view of Hellerstein et al. (US 2004/0221184) and Gschwind et al. (US 2003/0217297) and further in view of Anderson, II et al. (US 5,909,544).

Regarding Claims 16 and 31, Hasink does not explicitly teach the plurality of operating parameters comprising a first parameter and a second parameter, <u>wherein the first parameter comprises a speed of the client processor and the second parameter comprises a capacity of the client memory storage device</u>.

However, Anderson does teach the operating parameter comprising a first parameter and a second parameter, the first parameter comprising a speed of the client

processor and the second parameter comprising a capacity of the client memory storage device (*"It is an object of the invention to provide a system for tracking and scheduling of available resource computers connected in a network, including monitoring such parameters as, for example, the location, name, operating system, memory, speed, processor characteristics, memory capacity and other operational characteristics, of each resource computer, and using that information to allocate those resource computers to run applications, such as for example, test applications and collect data, such as test data"* – See Col. 4, lines 22-30).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to include processor speed and storage capacity as operating parameters. One of ordinary skill would have been motivated to do so since Anderson shows in Col. 4, lines 22-30 that processor speed and memory capacity are among several parameters that are important to take into consideration when allocating resources.

4. Claim 42 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hasink et al. (US 2005/0149932) in view of Hellerstein et al. (US 2004/0221184) and Gschwind et al. (US 2003/0217297) and further in view of Burke (US 6,704,816).

Regarding Claim 42, Hasink does not explicitly teach the application modifying its own execution comprising the application selecting between parallel and sequential execution of operations of the application.

However, Burke does teach modifying the execution of an application including selecting between parallel and sequential execution of operations of the application (*"most processors are essentially sequential devices and can only execute one instruction at a time. (Exceptions to this are parallel processors such as the Transputer). As a result, conventional hardware execution of a software function will in essence be a sequential process, even if pipelining is used to allow several instructions along an instruction stream to be worked on simultaneously. By contrast, HDL's are inherently parallel, allowing more than one command level function to be performed by the FPGA at the same time"* – See Col. 2, lines 43-52; *"Thus, by transferring tasks from the processor to the FPGA, a change from sequential to parallel execution can be achieved"* – See Col. 2, lines 65-67).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Hasink to include an application modifying its own execution comprising the application selecting between parallel and sequential execution of operations. Using the technique of changing between sequential and parallel execution described by Burke allows the processor to be freed up for other tasks and allows functions to be executed more efficiently with parallelism (See Burke, Col. 2, line 67 & Col. 3, lines 1-2).

Allowable Subject Matter

5. Claim 40 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

6. Applicant's arguments with respect to Claims 1 and 17 have been considered but are moot in view of the new grounds of rejection.

Conclusion

7. Applicant's amendment necessitated the new grounds of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Scott M. Sciacca whose telephone number is (571) 270-1919. The examiner can normally be reached on Monday thru Friday, 7:30 A.M. - 5:00 P.M. EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeff Pwu can be reached on (571) 272-6798. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Scott M. Sciacca/
Examiner, Art Unit 2446

/Jeffrey Pwu/
Supervisory Patent Examiner, Art Unit 2446